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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

JAMES W. BUTLER and
GUARANTY NATIONAL BANK,
an Oklahoma Corporation,
Petitioners,

vs.

FEDERAL NATIONAL
MORTGAGE ASSOCIATION,
Respondent.

BRIEF IN REPLY TO BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIARORI

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BRIEF IN REPLY TO BRIEF IN RESPONSE TO PETITION FOR WRIT OF CERTIARORI

The Respondent's Brief in Response to the Petition for Writ of Certiarori is totally absent any merit, either in law, or fact, and should be disregarded for the reasons and upon the grounds hereinafter set forth:

I

THAT THE 9.5% per annum rate of interest is only one of three factors included in the calculation of the 10.5% per annum finance charges applicable to the loan in issue dated 7/24/78.

The Respondent in its opening statement, and Propositions III, and IV, of its Response, has attempted to deliberately and willfully confuse and mislead this HONORABLE COURT by stating to the effect that the rate of interest is 9.5% per annum on the unauthorized supervised consumer mortgage loan in issue dated 7/24/78 is less than 10.5% per annum, when said rate of interest is only one of the three factors which make up the finance char-

ges of the instant loan that yields a 10.5% per annum rate, because said Respondent omitted mentioning the mortgage insurance and other prepaid charges, hence, the said omissions amounts to an alteration of the wording, and meaning of the Oklahoma UCCC Statutory definition of loan finance charges under the provisions of 14A O.S.A. 1969 §3-109.

"(1) 'Loan finance charge' means the sum of (a) * * * * * * * * * *, including any of the following types of charges, which are applicable: interest on any amount payable under a point, discount, or other systems of charges, however denominated, premiums or other charges, for any guarantee or insurance protecting the lender against the debtor's default or other credit loss," See Statement of the Case, paragraph one (1), at page 13, and Propositions I, and II, in the Petition for Writ of Certiarori.

THAT THE said loan in issue was rendered void ab initio and in toto as in violation of law and was non existing on 8/24/81 when this Petitioner assumed the same.

That Propositions I, and II, in the Response Brief are likewise further attempts to confuse and mislead this HONORABLE COURT by the Respondent in stating to the effect that the unauthorized supervised mortgage loan in issue was an existing obligation, when in fact, on 7/24/78, the said loan was non existing under the provisions of the Oklahoma UCCC loan statutes 14A O.S.A. 1969 §5-202(2), by reason, said loan was rendered void ab initio and in toto as in violation of law, and incapable of validation or ratification under any set circumstances, thus, this Petitioner could not legally assume the non existing obligation. See KUYKENDALL v. MALERNEE, Okl. App., 516 P.2d 558 (1973), and MCLAIN v. OKLAHOMA COTTON GROWERS' ASS'N, Okl, 255 P. 260 (1927). See Propositions II, and III, in Petition for Writ of Certiarori. "Effect of violations on rights of parties.- (2) If

a creditor has violated the provisions of this Act applying to authority to make supervised loans (Section 3-502), the loan is void and the debtor is not obligated to pay either the principal or loan finance charge. If he has paid any part of the principal of the loan finance charge, he has a right to recover the payment from the person violating this Act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt." 14A O.S.A. 1969 §5-202(2).

III

THE original mortgage loan dated 7/24/78 could not be insured by FHA at any time because the original mortgagee made the said loan in violation of law, and held it out to FHA as being valid and enforceable in order to obtain mortgage insurance, which amounted to a misrepresentation and fraud.

The Respondent's claim that the said mortgage loan in issue was insured by FHA is without merit, by reason, 12 USCS §1709(e)

prohibits FHA from insuring such contracts that are void and unenforceable as in the case at bar, especially when the original mortgagee misrepresents and pepetrates fraud upon FHA to obtain insurance by holding the same out as being valid and enforceable. "Any contract of insurance heretofore or hereafter executed by the Secretary under his title shall be conclusive evidence of the eligibility of the loan or mortgage for insurance, * * * * * * * * * * * * *, except for fraud or misrepresentation on the part of such approved financial institution or approved mortgagee." (Emphasis Added) 12 USCS §1709(e).

CONCLUSION

The decision of the Oklahoma Supreme Court is solely based upon its retroactive application of its judicial construction of the non applicable UCCC CREDIT SALES STATUTES 14A O.S.A. 1981 §2-101 et seq., which is clearly and affirmatively demonstrated within

its order dated 2/6/84, attached to the Petition for Writ of Certiarori as Appendix 01, at page i, of the APPENDIX, whixh judgment was unexpected and unanticipated by this Petitioner and raised for the first time the duly required federal questions, therefore, the Petition for Writ of Certiarori should be sustained, because to deny the same and holding to the said rule would leave a serious gap in the remedy for such violations of this Petitioner's constitutional rights protected under the Fourteenth Amendment and Article I of the Federal Constitutional. SAUNDERS v. SHAW et al, 244 U.S. 317, 61 L.Ed. 1163, 37 S.Ct. 638 (1920).

Respectfully submitted,

James W. Butler
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CERTIFICATE OF MAILING-AFFIDAVIT

STATE OF OKLAHOMA)
) ss
COUNTY OF TULSA)

I, JAMES W. BUTLER, of legal age, first being sworn upon my oath, deposes and states:

That on the 13th day of June, 1984, I deposited in the United States Mails with the proper postage prepaid, three (3) true and exact copies of the above and foregoing Reply addressed to the following: Jack I. Gaither, Attorney for Respondent, Law Building, Suite 100, 500 West 7th Street, Tulsa, Oklahoma 74119 and J. Schaad Titus, Attorney for Petitioner Bank, 900 World Building, Tulsa, Oklahoma 74103.

Further, the affiant saieth not.

Dated this 13th day of June, 1984.

JAMES W. BUTLER

Subscribed and sworn to before me this 13th day of June, 1984.

NOTARY PUBLIC

MY COMMISSION EXPIRES ON THE 16th day of March, 1985.